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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,072	07/16/2003	Mark S. Moir	004-8428	1240

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AUSTIN, TX 78731-1191

EXAMINER

FLOURNOY, HORACE L

ART UNIT	PAPER NUMBER
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2189

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/621,072	<b>Applicant(s)</b> MOIR ET AL.	
	<b>Examiner</b> Horace L. Flournoy	<b>Art Unit</b> 2189	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 25-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24, 44-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/31/2006, 12/30/2005, 12/19, 2005</u><br><u>09/29/2004, 6/15/2004</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of group I in the reply filed on April 6, 2006 is acknowledged.

## **INFORMATION CONCERNING OATH/DECLARATION**

### ***Oath/Declaration***

The applicant's oath/declaration has been reviewed by the examiner and is found to conform to the requirements prescribed in **37 C.F.R. 1.63**.

## **ACKNOWLEDGEMENT OF REFERENCES CITED BY APPLICANT**

As required by **M.P.E.P. 609(c)**, the examiner acknowledges the applicant's submission of the Information Disclosure Statement dated **05/25/2006** and the cited reference has been considered in the examination of the claims now pending. As required by **M.P.E.P. 609(c)**, a copy of the PTOL-1449 initialed and dated by the examiner is attached to the instant office action.

## REJECTIONS NOT BASED ON PRIOR ART

### Claim Objections

Claims 3, 6, and 65 are objected to because of the following informalities (see below). Appropriate correction is required.

- Claim 3, line 2: change “access state” to –access a state–.
- Claim 3, line 4: change “on state” to –on a state–.
- Claim 6, line 2: change “during course” to –during the course–.
- Claim 65, line 4: change “by ones” to –by one–.

### Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-24 and 68 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 is directed towards a program code per se.

Claims 44-64 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. There is no tangible result of the steps or program. Claims 44-64 are directed to a computer program, which is an example of functional descriptive material, per se. In accordance with the current “**Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility**”, pages 52-54, a claim to functional descriptive material, per se, without a

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tangible result is not patent-eligible. For example in claim 44, “a *definition*” and “*functional encodings*” are not tangible results.

With respect to claims 44-64, the claimed invention is directed to non-statutory subject matter. Computer readable medium is disclosed to include “wireless or other communications medium”, as disclosed in the specification on page 24, lines 1-3, are non-tangible and therefore are not patent-eligible subject matter.

**Claim Rejections - 35 USC § 112, 1<sup>st</sup> Paragraph**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-23, 44-64, and 68 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter (through the use of the word “*implementation*”) which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 65-67 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

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one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Because of the use of the "means for" the applicant invokes these claim to be interpreted under 35 U.S.C. 112, sixth paragraph. Accordingly, the examiner has looked to the applicant's specification to properly interpret these claims. It is unclear to the examiner exactly where in the specification particularly describes the structure that corresponds to the means recited in the claims and therefore claim 65 fails the written description requirement.

**Claim Rejections - 35 USC § 112, 2<sup>nd</sup> Paragraph**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23, 44-64, and 68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "implementation" in claims 1, 44, and 54 is a relative term, which renders the claim indefinite. The term "implementation" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. "Implementation" can be interpreted in a variety of ways, e.g. method, apparatus, etc.

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Claims 1-23, 68 are further rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "defined in shared storage managed thereby" in claim 1 is unclear in context. The terms "defined in shared storage managed thereby" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The examiner is unclear in the meaning of "defined in shared storage managed thereby" and asks for clarification of this limitation.

Claims 65-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Because of the use of the "means for" the applicant invokes these claim to be interpreted under 35 U.S.C. 112, sixth paragraph. Accordingly, the examiner has looked to the applicant's specification to properly interpret these claims. It is unclear to the examiner exactly where in the specification particularly describes the structure that corresponds to the means recited in the claims.

***PRIOR ART OF RECORD CITED BY THE EXAMINER***

6,826,757 Steele Jr. et al (see abstract for anticipated limitations).

## **CONCLUSION**

### **Direction of Future Correspondences**

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Horace L. Flournoy whose telephone number is (571) 272-2705. The examiner can normally be reached on Monday through Friday 8:00 AM to 5:30 PM (ET).

### **Important Note**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Reginald G. Bragdon can be reached on (571) 272-4204. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 746-7239.

Information regarding the status of an Application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or PUBLIC PAIR. Status information for unpublished applications is available through Private Pair only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

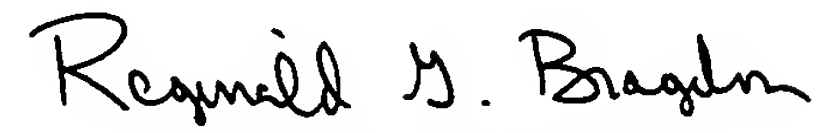


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Horace L. Flournoy

Patent Examiner  
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Reginald G. Bragdon

Supervisory Patent Examiner  
Technology Center 2100